

In re Interest of Hannah W

Caselaw No.

Nos. A-17-1311 through A-17-1313

Filed on

Tuesday, August 21, 2018

Summary:

The county court of Buffalo County terminated the parental rights of Rose U. and Kevin U. to their three minor children, Hannah, Ethan, and Abigail. Rose had previously had another child removed from her care in 2010 as a result of injuries sustained at her hands during a physical discipline episode. She ultimately relinquished her parental rights to this fourth child in 2011 after being unable to meet her case plan goals of anger management, family therapy, and family support services.

After additional intakes were received regarding the family's living environment and given Rose's having just relinquished rights to a child and her inability to meet a Hannah's basic needs, Hannah was removed from the house sometime in late 2011/early 2012 before being returned in November 2013. The case remained open and concerns continued, resulting in another removal six months later before the children were again returned to the home.

In August 2015, the family once again came under the concern of DHHS after a report of a dirty home and a head injury sustained by Ethan, which Rose was inconsistent in explaining. This concern continued to ripen when it was learned Ethan had been hospitalized for seizures and Rose's caregiving during the hospitalization had been less than on par.

Consequently, Hannah and Ethan were removed from the home and the State filed a petition in September 2015 alleging that the children were within the meaning of 43-247(3)(a). Another petition for Abigail followed in December 2016. In January 2017, the State moved to TPR for Rose and Kevin for these three children and two older children still in the home, alleging that TPR was in the best interests of the children.

Termination hearings followed on April 10 and 11, May 23, and August 15, 2017, where Rose's mental health and her inability to accept responsibility for the issues in the case were a concern and seemed unchanged since her original case with Hannah in 2011. A psychological and parenting evaluation in May 2016 revealed that Rose blames others for her problems, that she feels that she is the victim, and that interventions to help her would be ineffective. The evaluations also determined that the children did not rely on Rose and were indifferent to her presence, while Rose was distant and unengaged, as well as resistant to learning new parenting techniques. Rose was unpredictable, mercurial, and often punitive and harsh, which correlated with her own life pattern of inconsistency, self-centeredness, and lacking in good parenting role models. The end result was a diagnosis of a borderline personality disorder with narcissistic features and an adjustment disorder with a recommendation of in-depth counseling. Rose responded by beginning to see a therapist starting in August 2016 but with little progress until May 2017 when progress was slow.

Similarly, a review of the case plans set out prior to the termination hearings showed a continuing disbelief by Rose that she had anything to improve upon. Regular struggles during

visitation were reported as Rose would refuse to listen to the family support workers and, instead, shift blame to DHHS for her situation. Recommendations and attempts to get Rose to deal with anger and emotional issues in visits were largely fruitless and towards the end of the case Hannah would refuse to go on visits to see Rose. At the time of termination, all caseworkers involved in the case had strong concerns about allowing the children to return home due to Rose's overreactions to infractions, an unexplained mark on Hannah in light of Hannah's assertion that Rose grabbed her, continued safety and sanitary concerns, and repeated fighting between Kevin and Rose in front of the children. Caseworkers remarked that they didn't think there were any other services available that would help them achieve reunification.

Lastly and at the conclusion of the termination hearing, the children's GAL filed to suspend visitation due to allegations that, during recent visits, Rose had shown "utter, and complete disrespect" toward the visitation workers such that the children's safety and well-being were placed in jeopardy. Specifically, Rose became angry, screamed profanities, and grabbed Hannah's arm to pull her out of a restroom; screamed at Kevin, who then confronted a visitation worker; and generally created anxiety and distress in the children. This motion was granted and visitation was suspended.

On November 17, 2017, the court entered an order terminating Kevin and Rose's parental rights due to the number of cases, demonstrable lack of progress, antipathy towards DHHS and caseworkers, contempt for the system, inability to provide and care for their children, and temporal distance from meaningful reunification.

Rose appealed, assigning that the juvenile court erred in finding that statutory grounds existed to support termination, that there was clear and convincing evidence that she was an unfit parent, and that termination of her parental rights was in the children's best interests.

Kevin attempted a cross-appeal, assigning that the juvenile court erred in finding statutory grounds to support termination and in finding that termination was in the children's best interests. Kevin's attempted cross-appeal was not designated as such and, therefore, did not conform to the rules set forth for appellate review to be undertaken and therefore was not addressed.

As for Rose's appeal with regard to the statutory grounds for termination, the Court of Appeals notes that the juvenile court found that the State had proved three of the conditions contained in 43-292, specifically (2), (5), and (6), while also finding on its own that (7) applied to Hannah and Ethan. Rose only contests subsection (5) and concedes (2), (6), and (7). Thus, the Court of Appeals notes that only one of the subsections is necessary to terminate under 43-292 and affirms the lower court on this point.

Turning to Rose's protests regarding her parental fitness and the best interests of the children, the Court of Appeals notes that it is "always the State's burden to prove by clear and convincing evidence that the parent is unfit and that the child's best interests are served by his or her continued removal from parental custody." Further, the court notes that "[t]he term 'unfitness' is not expressly used in 43-292, but the concept is generally encompassed by the fault and neglect subsections of that statute, and also through a determination of the child's best interests." Thus, the evidence needed to prove the grounds for termination must be "highly relevant to the best interests of the juvenile, as it would show abandonment, neglect, unfitness, or abuse." The Court concludes its summation of TPR law by stating that "the law does not require perfection of a parent; instead, courts should look for a parent's

continued improvement in parenting skills and a beneficial relationship between parent and child.?

Looking towards the facts in the instant matter, the Court notes that throughout the years, cases, services, caseworkers, and attempts to help remedy the situation and provide a stable environment for the children, little improvement in the conditions that led to adjudication had been made. The Court observed that, while Rose participated in services, she was consistently resistant to advice, making changes, or making a good faith effort at reform. Instead, the process was marred with continued accusations, shifts of blame, and a fundamental struggle to understand her own trauma history and how that has impacted the lives of her children.

Rose only began to show progress at the very end, once termination proceedings had been initiated. But by that point, Hannah and Ethan had been living out-of-home for nearly two years in the present case and Abigail for the entirety of her life. In total, Hannah had been out-of-home even longer on previous cases and her therapist reported that she still could not safely return home in the near future.

The Court of Appeals reminds that children ?cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity.? Due to Rose?s inability to make meaningful progress in a case where the underlying issues are documented back to 2011 and continue presently, the Court concludes that the record demonstrates that the State established by clear and convincing evidence that Rose was parentally unfit and that it was in the best interests of the children that her parental rights be terminated.
